



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

TREXLER, BUSHNELL, GIANGIORGI,
BLACKSTONE & MARR, LTD.
105 WEST ADAMS STREET
SUITE 3600
CHICAGO, IL 60603

COPY MAILED

AUG 01 2005

OFFICE OF PETITIONS

In re Application of :
Daniel J. Smith et al :
Application No. 10/622,755 : DECISION GRANTING PETITION
Filed: July 18, 2003 : UNDER 37 CFR 1.55(c)
Attorney Docket No. 1171/39359A :
:

This is a decision on the petition filed February 17, 2005, which is being treated as a petition under 37 CFR 1.55(c) requesting acceptance of an unintentionally delayed claim under 35 USC 119(a) through (d) for benefit of the filing date of foreign New Zealand Application No. 509041, filed December 20, 2000.

A petition for acceptance of a claim for foreign priority under 37 CFR 1.55(c) is only applicable to those applications filed on or after November 29, 2000. Further, the nonprovisional application must be filed within 12 months of the filing date of the foreign application. In addition, a petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 119(a)-(d) must be accompanied by:

- (1) the claim under 35 U.S.C. §119(a)-(d) to the prior foreign application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed after November 29, 2000, and did not include a reference to the foreign application, for which benefit is now sought, within the later of four months from the actual filing date of the application

¹ The claim must identify in the oath or declaration the foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by specifying the application number, country, and the filing date. *Note* also 37 CFR 1.63(c)(2).

or sixteen months from the filing date of the prior foreign application. Therefore, since the claim for priority is submitted after the period specified in 37 CFR 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 CFR 1.55(c).

The above-identified pending nonprovisional application was filed on July 18, 2003, which is after November 29, 2000. Intermediate Application No. 09/850,797 was filed within 12 months of December 20, 2000 (the filing date of the foreign application to which benefit is now being claimed). On February 17, 2005, an application data sheet was received which identifies the foreign application for which priority is claimed by application number, country and filing date. The required petition fee of \$1370 was received with the petition. Lastly, petitioner has provided an adequate statement of unintentional delay.

All requirements being met, the petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 119(a) through (d) is granted.

A corrected filing receipt accompanies this decision on petition.

This application is being forwarded to Technology Center AU 3743 for examination in due course and for consideration by the examiner of record of the foreign priority claim under 35 U.S.C. § 119(a) through (d) and 37 CFR 1.55(c). **The examiner will determine whether the certified copies are present in the prior-filed parent application.**

Any inquiries directly pertaining to this matter may be directed to the undersigned at (571) 272-3208.



Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Filing Receipt